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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/540,343	10/06/1995	DENNIS E. HALLAHAN	ARCD:194	8900

7590 10/16/2003

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Austin, TX 78701

EXAMINER

PRIEBE, SCOTT DAVID

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 10/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 08/540,343	<b>Applicant(s)</b> HALLAHAN ET AL.	
	<b>Examiner</b> Scott D. Priebe	<b>Art Unit</b> 1632	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 06 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

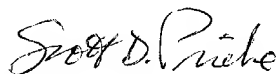
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 8,10,11,13,15,18-27 and 35-55.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
 Scott D. Priebe  
 Primary Examiner  
 Art Unit: 1632

Continuation of 5. does NOT place the application in condition for allowance because: The declaration filed on 9/19/03 under 37 CFR 1.131 has been considered but is ineffective to overcome the Martuza references. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Martuza references, or to establish diligence from a date prior to the date of reduction to practice of the Martuza references to either a constructive reduction to practice or an actual reduction to practice.

Claims 8, 10, 11, 13, 15, and 18-27 are directed to a method of inhibiting growth of a tumor in vivo, i.e. in a mammal, by administration of an HSV in combination with ionizing radiation. The experimental methods described in the declaration are directed to the effect of ionizing radiation on cultured tumor cells infected with an HSV, and do not involve use of the claimed methods, nor do the claims embrace the experimental methods described. At best, these experiments show evidence relating to the conception of the invention. The declaration provides no evidence of an actual reduction to practice of the invention of claims 8, 10, 11, 13, 15, and 18-27, nor of any diligence up to the constructive reduction to practice upon filing of the instant application. With respect to claims 35-55, the declaration provides no evidence of conception of a method of inhibiting growth of a tumor in vivo, i.e. in a mammal, by administration of an adenovirus in combination with ionizing radiation.

Continuation of 10. Other: Applicant is reminded that any new affidavits or exhibits must be submitted in a paper separate from an appeal brief and must comply with 37 CFR 1.195. See MPEP 1207 & 1211.02.